

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RAFAEL PENA,	§
	§ No. 390, 2011
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for Sussex County
STATE OF DELAWARE,	§ Cr. ID No. 0707026365
	§
Plaintiff Below-	§
Appellee.	§

Submitted: August 26, 2011

Decided: August 31, 2011

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justices

ORDER

This 31st day of August 2011, it appears to the Court that:

(1) On August 1, 2011, the Court received the appellant's notice of appeal from the Superior Court's order, dated June 20, 2011 and docketed on June 21, 2011, which denied his motion to modify sentence. Pursuant to Supreme Court Rule 6, a timely notice of appeal should have been filed on or before July 21, 2011.

(2) On August 2, 2011, the Clerk issued a notice pursuant to Rule 29(b) directing the appellant to show cause why the appeal should not be dismissed as untimely filed. The appellant filed his response on August 26, 2011. In his response, he states that his appeal is timely if Saturdays,

Sundays and holidays are not counted. Pursuant to Rule 6(a) (iii), a notice of appeal in any proceeding for postconviction relief must be filed within 30 days after entry upon the docket of the judgment or order being appealed.

(3) Time is a jurisdictional requirement.¹ A notice of appeal must be received by the Office of the Clerk within the applicable time period in order to be effective.² An appellant's *pro se* status does not excuse a failure to comply strictly with the jurisdictional requirements of Rule 6.³ Unless the appellant can demonstrate that his failure to file a timely notice of appeal is attributable to court-related personnel, his appeal may not be considered.⁴

(4) There is nothing in the record before us reflecting that the appellant's failure to file a timely notice of appeal is attributable to court-related personnel. Consequently, this case does not fall within the exception to the general rule that mandates the timely filing of a notice of appeal. Thus, the Court concludes that this appeal must be dismissed.

NOW, THEREFORE, IT IS ORDERED, pursuant to Supreme Court Rule 29(b), that this appeal is DISMISSED.

BY THE COURT:
/s/ Myron T. Steele
Chief Justice

¹ *Carr v. State*, 554 A.2d 778, 779 (Del. 1989).

² Supr. Ct. R. 10(a).

³ *Carr v. State*, 554 A.2d at 779.

⁴ *Bey v. State*, 402 A.2d 362, 363 (Del. 1979).